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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th March 2008

No.3770-li/1(B)-5/2006/LE.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 4th October 2007 in Industrial Dispute Case No.10/2006 of the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the Management of District Transport Manager (Administration) Orissa State Road Transport Corporation, Berhampur and their workman Shri Raghupati Sitaram, Ex-Driver was referred for adjudication is hereby published as in the scheduled below: ____

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No.10/2006

The 4th October 2007

Present : Shri G.K. Mishra, O.S.J.S. (Junior Branch)

Presiding Officer,
Labour Court, Jeypore

Dist : Koraput

Between: District Transport Manager (Administration)

O.S.R.T.C., Berhampur,

At/P.O.-Berhampur,

Dist: Ganjam

.. First-Party—Management

Versus

Its workman,

Raghupati Sitaram, Ex-Driver, O.S.R.T.C.

C/o Shri Sambhu Pattnaik

Bhabaninagar Lane-III,

At/P.O.-Berhampur,

Dist: Ganjam

.. Second-Party—Workman

Under Sections : 10 & 12 of the Industrial Disputes Act, 1947.

Appearances : For the Management

.. Shri B.K. Panda
Junior Clerk of O.S.R.T.C.,
Bhubaneswar

For the Workman

.. Shri K.Chandra Mishra, Advocate
Berhampur

Date of Argument

.. 27-09-2007

Date of Award

.. 04-10-2007

1. The Government of Orissa in the Labour & Employment Department in exercise of the power conferred upon them under sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 6832 (5) dated the 27th July 2006 for adjudication of the following disputes : —

SCHEDULE

“Whether the termination of services of the workman Shri Raghupati Sitaram, Ex-Driver with effect from 25th September 2002 by the District Transport Manager, O.S.R.T.C., Berhampur is legal and/or justified ? If not, to what relief is the workman entitled ?

2. This is a case seems to have been originated out of the reference submitted by the Government before this Court for determination of an issue with regarding the validity and justifiability of the order of termination in respect of the workman coupled with any of the relief granted in consequence of such determination.

3. The synopsis of the facts presented by the workman may be described here under that the Management having continuously defaulted in paying wages to him he succumbed to malnutrition and disease due to lack of food on account of short of money for which he was compelled to be treated at a Hospital for a period within which he could not attend the job or duty from the 18th September 2001 to 12th June 2002 but unfortunately the Management without considering the leave application along with the medical certificate annexed thereto filed to the effect terminated him from the service without recourse to any enquiry or giving any opportunity of being heard. In this connection the order passed by the Management is challenged to be unjustified and illegal which is liable to be set-aside.

4. The Management on the other hand contended in contrary to *inter alia* that the workman having remained absent unauthorisedly. Without any leave application for a longer period of one year his service was not required for the public interest thereby his service was terminated by the authority concerned consequent upon the failure of reply to the submitted by the workman on basis of the show cause issued to him. It is further added that the termination was validity effected in favour of the workman, which should not be set-aside.

5. Primarily the service of the workman was temporary in nature and continuity for 10 (ten) years without break which can be dubbed as permanent in the nature. The constitution of India has guaranteed security of service to the workers. The conferment of permanent status of an

employee guarantee security to service. In that context the service of such employee in respect of the appointment by any agency including state shall not be terminated with a simple notice except in accordance with procedure established by the law. Any action taken there to can be considered to be violative of Art. 14 as well as 16 of the Indian Constitution. Reliance has been placed in a decision by our own Apex Court O.P. Bandari Co. Ltd., AIR 1987 S.C.-III. If any regulation is made to the defect violating the norm of the procedure shall be considered to be capable of vicious discrimination and can be held to be naked "hire and fair" rule. This has been reiterated by our S.C. in Central Inland Water Corporation Limited *Versus* B. Ganguli AIR-1986 S.C. 157. The Supreme Court in approving the above decisions has made it clear in Delhi Transport Corporation *Versus* D.T.C. Masdoor Congress AIR 1991 S.C.-101 that the service of confirmed employee could not have been illegally terminated by any simple notice.

6. Besides above analysis the allegations of misconduct view by the Management must be incorporated arbitrarily in the standing order. Standing order providing automatic termination consequent upon unauthorised absence can not prevail over the normal rule which requires clear opportunity to be given to the workman on hearing of the matter. The principles of natural justice must be imported into the standing order. In this connection our S.C. emphasised in a decision in D.K. Yadav *Versus* J.M.A. Industrial Limited, 1993, AIR ACCW 1995 that in no uncertain terms that principles of natural justice would have to be read in to provision relating to automatic termination of service.

7. In the rule prescribed by the Management regulating the service of the condition of the workman u/s 110 clause 3 of OSRTC Regulation Act 1978 that no employee shall proceed on leave without obtaining in writing a permission to avail himself of the leave pending formal sanction or sanction of leave applied by him from the immediate superior as the case may be. These not doing so will be guilty of misconduct and besides being considered as absence without leave will be rendered themselves for appropriate disciplinary action. It stipulates that for any authorised a disciplinary action shall be initiated against the workman. It has been categorically manifested that unauthorised absence is considered to be a misconduct. Where the regulations state that absence without cause is a misconduct employer, should enquiry into the question whether there was acceptable causes for the absence. Reliance has been placed in a decision rendered in M. Krishan Raju *Versus* the Electrical Corporation of India 1995 clause -1 ALD-478. In case of misconduct as alleged it is the duty incumbent on the Management to frame charge. In order to prove charges an enquiry officer shall be appointed who has examined the materials on record and submitted report before the disciplinary authority. On the basis of that report penalty may be imposed after giving show cause to the workman. In order to prove charge an enquiry officer shall be appointed who has examined the materials on record and submitted report before the disciplinary authority. On the basis of that report penalty may be imposed after giving show cause to the workman. The proving of charge must relate the determination under which circumstances the workman was compelled to proceed on leave and why he over stayed the leave and whether any just and reasonable cause for over staying leave and whether any medical certificate was available to support his illness. The above consideration must be taken into view

while proving the misconduct. The obligation on part of the workman will arise to adduce evidence supporting his cause. Unless due opportunity is given the just and reasonable cause can not be established. The worker has been conferred with a right to life as per 21 of the Indian Constitution the right to life is of no meaning if there is no security to service. The right to livelihood includes the right to work. There is no guarantee to provide right of work due to the scarcity of financial resources where the right to work is provided protection should be given for its continuity. If any workman is deprived of his right to work he will definitely succumb to starvation. Before depriving any person from the right to work some essential formalities must be maintained without which action would be declared unfair, unjust and unreasonable. Therefore it mandates that action taken for termination from any service should not be to arbitrary and capricious of even though discretionary authority is conferred on the employer to terminate the service. The Principles of natural justice is concomitant to the concept of fair and just and reasonable principles. If a decision is taken without any principle or without any rule it is unacceptable and such decision is anathema to the rule of law. Discretion means sound discretion guided by law and it must be governed by rule not humor. It must not be arbitrary, vague and fanciful just fair and reasonable decision attributes rule of law. In this sense rule of law may be said to be shown enemy of capricious action. Therefore, our constitution does not envisage unfairness or unreasonableness. If the employer has been conferred with unfettered discretions to terminate or not the service of the workman the power must be exercised fairly and reasonably in accordance with the prescribed norms befitting to the natural justice. Therefore the standing order must be read into principles of natural justice while taking any decision of terminating the service of the workman.

8. In the instant case the disciplinary authority after giving show cause straight way terminated the service of the workman without giving opportunity of being heard on the matter of absence. He has also directly violated the norms of the standing order the proceeding should have been initiated against the workman. If the workman failed to reply, a proceeding could have been initiated *ex parte* through an appointment of an enquiry officer who could have examined all the materials available against him. In absence of such enquiry the action taken hastily is considered to be arbitrary unjust and unreasonable. The ground taken by the workman that due to lack of taking food emerging out of the non-payment of wages is purely reasonable. A workman without receipt of any wages can not be compelled to work. The constitution of India has directed the authority to take care of health and strength of the worker. Due to such contingency the workman was compelled to remain on leave for treatment of his ill health. The lapses of the Management paved the way for the workman to remain on leave for his treatment. By this the Management has created hostile attitude to the workman. In this connection there was just and reasonable cause accrued on behalf of the workman to remain absent from duty which should have been taken care of by the Management before taking action of the termination. Taking the aforesaid analysis in view it is crystal clear that the action of the Management is completely established and liable to be set aside on the ground of unjustifiability and invalidity.

9. Besides, the punishment imposed on the workman is strikingly disproportionate and quite shocking. It is not in proportionate to the offence committed by the workman. The absence from leave is quite minor, in nature. Therefore, the court can consider the imposition of punishment considering to the unjust for minor offence. Such a punishment of termination is unwarranted. Therefore it is to be set aside.

ORDER

The reference is answered accordingly. The Management is directed to reinstate the workman within six months and paid the full back wages within the denied period otherwise the part to take shelter of the appropriate authority for getting full back wages.

Dictated and Corrected by me

G.K. Mishra

dt. 04-10-2007

Presiding Officer,

Labour Court,

Jeypore

G.K. Mishra

dt. 04-10-2007

Presiding Officer,

Labour Court.

Jeypore

By order of the Governor

P. MALLICK

Under Secretary to Government